

IN THE UNITED STATES DISTRICTS COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

DEIDRE AGAN,) Cause 1:19-cv-00083-SPW-TJC
)
Plaintiff,)
) VIDEO DEPOSITION
vs.)
)
BNSF RAILWAY CO., a) OF
Delaware corporation,)
)
Defendant.) DEIDRE AGAN

2722 Third Avenue North, Suite 400
Billings, Montana
May 27, 2020

APPEARANCES:

Nelson G. Wolff (Phone)
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-and

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For the Defendant.

Also present: Joel Hageman
Videographer

EXHIBIT

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| <p style="text-align: right;">Page 2</p> <p style="text-align: center;">I N D E X</p> <p style="text-align: right;">Page</p> <p>1</p> <p>2</p> <p>3 Examination by Mr. Nicastro 6</p> <p>4 Examination by Mr. Wolff 172</p> <p>5 Further Examination by Mr. Nicastro 173</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p style="text-align: right;">Page 4</p> <p>1 The video deposition of DEIDRE AGAN,</p> <p>2 produced, sworn and examined upon her oath on the</p> <p>3 27th day of May, 2020, commencing at 9:03 a.m., at</p> <p>4 2722 Third Avenue North, Suite 400, Billings,</p> <p>5 Montana, before me, Frances L. Mock, a free-lance</p> <p>6 reporter, a Notary Public within and for the State of</p> <p>7 Montana pursuant to Notice and the Federal Rules of</p> <p>8 Civil Procedure, for the examination of the said</p> <p>9 DEIDRE AGAN, the plaintiff called for examination by</p> <p>10 the defendant herein, in a certain suit and matter in</p> <p>11 controversy now pending and undetermined in the said</p> <p>12 United States District Court, District of Montana,</p> <p>13 Billings Division, being Civil Action No.</p> <p>14 1:19-cv-0083-SPW-TJC.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22 "mm-hmm" is yes</p> <p>23 "huh-uh" is no</p> <p>24</p> <p>25</p> |
| <p style="text-align: right;">Page 3</p> <p style="text-align: center;">E X H I B I T S</p> <p style="text-align: right;">Page</p> <p>1</p> <p>2</p> <p>3 Number Description Page</p> <p>4 1 BNSF Crew Management-Tape History 60</p> <p>5 2 BNSF Return to Work Med. Questionnaire 85</p> <p>6 3 7/23/19 Dr. Ackerman visit 90</p> <p>7 4 12/16/08 Miles City Progress Note 96</p> <p>8 5 1/30/09 Miles City Progress 98</p> <p>9 6 2/10/09 Holy Rosary Screening Form 102</p> <p>10 7 3/4/09 Miles City Progress Note 106</p> <p>11 8 9/9/19 BNSF Medical Questionnaire 111</p> <p>12 9 10/2/12 Holy Rosary Radiology Report 11</p> <p>13 10 12/1/13 PA Kara Erickson visit, etc. 128</p> <p>14 11 8/8/14 Holy Rosary Healthcare visits 139</p> <p>15 12 12/23/14 Holy Rosary HC visit 141</p> <p>16 13 Holy Rosary Healthcare records 143</p> <p>17 14 On-train documents... 149</p> <p>18 15 8/24/16 Douglas Dalton PA record 169</p> <p>19 16 11/15/2016 Dr. Roccisano record 170</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p style="text-align: right;">Page 5</p> <p>1 MR. HAGEMAN: Good morning.</p> <p>2 We are going on the record at 9:03 a.m. on</p> <p>3 May 27th, 2020.</p> <p>4 Please note that the microphones are</p> <p>5 sensitive and may pick up whispering and private</p> <p>6 conversations and cellular interference.</p> <p>7 Please turn off all cell phones or place</p> <p>8 them away from the microphones as they can interfere</p> <p>9 with the deposition audio.</p> <p>10 Audio and video recording will continue to</p> <p>11 take place until all parties agree to go off the</p> <p>12 record.</p> <p>13 This is Media Unit 1 of the video recorded</p> <p>14 deposition of Deidre Agan taken by counsel for the</p> <p>15 defense in the matter of Deidre Agan, plaintiff</p> <p>16 versus BNSF Railway Company, defendant filed in the</p> <p>17 United States District Court for the District of</p> <p>18 Montana, Billings Division.</p> <p>19 This deposition is being held at the Yerger</p> <p>20 Law Firm located at 2722 Third Avenue North,</p> <p>21 Billings, Montana.</p> <p>22 My name is Joel Hageman from the firm</p> <p>23 Veritext, and I am the videographer. The court</p> <p>24 reporter is Fran Mock from the firm Veritext.</p> <p>25 I'm not related to any party in this</p> |

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| <p style="text-align: right;">Page 18</p> <p>1 perform my job, but there is still pain.</p> <p>2 Q. Do you typically have one shoulder that</p> <p>3 hurts more than the other?</p> <p>4 A. Sometimes.</p> <p>5 Q. I'm just saying in general, like if you</p> <p>6 were to add up all the days in the last six months,</p> <p>7 does your right shoulder hurt shoulder hurt more than</p> <p>8 your left? Left more than the other, or are they</p> <p>9 equal?</p> <p>10 A. Probably equal.</p> <p>11 Q. Which medical provider are you seeing for</p> <p>12 neck and shoulder pain currently?</p> <p>13 A. I have not seen a medical provider</p> <p>14 recently.</p> <p>15 Q. In 2019, did you see a medical provider for</p> <p>16 neck and shoulder pain?</p> <p>17 A. No.</p> <p>18 I saw one to establish care.</p> <p>19 Q. And when was that?</p> <p>20 A. I couldn't tell you exactly when.</p> <p>21 Q. Are we talking in 2019?</p> <p>22 A. Yes, I believe.</p> <p>23 Q. Okay.</p> <p>24 Has any doctor in the last year and a half</p> <p>25 told you that the shoulder and neck symptoms that</p> | <p style="text-align: right;">Page 20</p> <p>1 Q. Okay.</p> <p>2 So, if you went to Ortho Montana right now,</p> <p>3 are you saying they're not seeing you? They refuse</p> <p>4 to see you?</p> <p>5 A. I don't know.</p> <p>6 Q. Okay.</p> <p>7 So, do you even know how much it would cost</p> <p>8 if you went to Ortho Montana with your current health</p> <p>9 insurance to have one of the doctors who previously</p> <p>10 treated you follow up with you?</p> <p>11 A. No.</p> <p>12 Q. So, the only reason you didn't go back to</p> <p>13 the doctor in 20 -- so, the only reason you haven't</p> <p>14 gone back to Ortho Montana is because of some unpaid</p> <p>15 bills from 2016?</p> <p>16 A. No health insurance.</p> <p>17 Q. When did you get health insurance back,</p> <p>18 though?</p> <p>19 A. In 2019.</p> <p>20 Q. When were you reinstated for work?</p> <p>21 A. 2019.</p> <p>22 Q. Okay.</p> <p>23 And what month?</p> <p>24 A. February.</p> <p>25 Q. So at the beginning of the year, correct?</p> |
| <p style="text-align: right;">Page 19</p> <p>1 you're feeling right now are related to the accident?</p> <p>2 MR. WOLFF: Object to the lack of</p> <p>3 foundation.</p> <p>4 Subject to that, you may answer.</p> <p>5 THE WITNESS: Repeat the question.</p> <p>6 BY MR. NICASTRO:</p> <p>7 Q. Sure.</p> <p>8 Has any medical provider in the last year</p> <p>9 and a half told you that the neck and shoulder issues</p> <p>10 that we just discussed were caused the accident?</p> <p>11 A. No.</p> <p>12 Q. And if the answer's the same, that's fine.</p> <p>13 I want to be sure I'm clear on it.</p> <p>14 In 2019, what was the reason for not seeing</p> <p>15 a doctor for a neck or shoulder pain? Is it the same</p> <p>16 reason that you gave for not seeing a doctor for the</p> <p>17 headaches?</p> <p>18 A. Yes.</p> <p>19 Q. Why have you not gone back to Ortho Montana</p> <p>20 to have them look at these symptoms?</p> <p>21 A. Because my medical bills were never paid by</p> <p>22 the company.</p> <p>23 Q. So if you went to Ortho Montana last -- do</p> <p>24 you have insurance currently?</p> <p>25 A. Yes.</p> | <p style="text-align: right;">Page 21</p> <p>1 A. Correct.</p> <p>2 Q. Correct.</p> <p>3 And so you would agree that from February</p> <p>4 of 2019 up until the present day, you've had health</p> <p>5 insurance, so your doctor visit with either one of</p> <p>6 those doctors at Ortho Montana probably would have</p> <p>7 been covered?</p> <p>8 MR. WOLFF: Object to the form. It calls</p> <p>9 for speculation.</p> <p>10 BY MR. NICASTRO:</p> <p>11 Q. Go ahead and answer.</p> <p>12 A. You said it would probably be covered?</p> <p>13 Q. Let me ask you it this way:</p> <p>14 Can you think of any -- can you give me any</p> <p>15 particular reason why you think they may not have</p> <p>16 been covered by your health insurance?</p> <p>17 MR. YERGER: Calls for a legal conclusion.</p> <p>18 Go ahead and answer it.</p> <p>19 THE WITNESS: No.</p> <p>20 BY MR. NICASTRO:</p> <p>21 Q. Have you tried to go see any doctor for any</p> <p>22 of these medical conditions, and a doctor either</p> <p>23 didn't see you because of unpaid medical bills, or</p> <p>24 told you that they wouldn't see you unless you paid</p> <p>25 an amount of money that you thought was unreasonable?</p> |

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| <p style="text-align: right;">Page 22</p> <p>1 A. Ortho Montana.</p> <p>2 Q. Okay.</p> <p>3 So Ortho Montana told you they wouldn't see</p> <p>4 you?</p> <p>5 A. Yeah, because I had an outstanding balance.</p> <p>6 Q. Oh, okay.</p> <p>7 So when did that happen? When did you try</p> <p>8 to go back to Ortho Montana, and they told you that</p> <p>9 they would not see you because of an outstanding</p> <p>10 balance?</p> <p>11 A. 2017.</p> <p>12 Q. And did you have health insurance at that</p> <p>13 time?</p> <p>14 A. No.</p> <p>15 Q. Since you've had health insurance in 2019,</p> <p>16 has Ortho Montana told you that they would not see</p> <p>17 you because of an outstanding balance?</p> <p>18 A. I have not been to Ortho Montana.</p> <p>19 Q. Okay.</p> <p>20 So, you haven't even tried to go back to</p> <p>21 Ortho Montana to see if they would not give you care</p> <p>22 because of the balance, correct?</p> <p>23 A. Not recently.</p> <p>24 Q. Okay.</p> <p>25 And so when you -- when was it in 2017,</p> | <p style="text-align: right;">Page 24</p> <p>1 (indicating).</p> <p>2 Q. Okay.</p> <p>3 So you're pointing to your pinkie finger</p> <p>4 and your ring finger?</p> <p>5 A. Correct.</p> <p>6 Q. And you just did your right hand.</p> <p>7 Is it both hands, or is it just your right</p> <p>8 hand?</p> <p>9 A. Primarily just my right.</p> <p>10 Q. All right.</p> <p>11 And have you seen a doctor for any of that</p> <p>12 numbness in the last year and a half?</p> <p>13 A. No.</p> <p>14 Q. For the same reasons that we've already</p> <p>15 discussed?</p> <p>16 A. Yes.</p> <p>17 Q. Do you take anything for those symptoms?</p> <p>18 A. No.</p> <p>19 Q. Let me back up on the neck pain and the</p> <p>20 shoulder pain.</p> <p>21 Do you take any medication for that?</p> <p>22 A. Ibuprofen.</p> <p>23 Q. Anything for prescription?</p> <p>24 A. No.</p> <p>25 Q. Has any medical doctor told you that the</p> |
| <p style="text-align: right;">Page 23</p> <p>1 what month --</p> <p>2 A. I --</p> <p>3 MR. YERGER: Let him finish the question.</p> <p>4 THE WITNESS: Okay.</p> <p>5 BY MR. NICASTRO:</p> <p>6 Q. What month was it where you say they</p> <p>7 refused to see you?</p> <p>8 A. I can't give you an exact time.</p> <p>9 Q. Was it a conversation you had with somebody</p> <p>10 in the office, or was it a doctor that said that?</p> <p>11 A. It was over the phone when I called to make</p> <p>12 an appointment.</p> <p>13 Q. Do you know who that individual was?</p> <p>14 A. No.</p> <p>15 Q. Have you tried at any other time to go back</p> <p>16 to Ortho Montana since 2017?</p> <p>17 A. No.</p> <p>18 Q. The numbness in your fingers, is that</p> <p>19 something you still currently have?</p> <p>20 A. At times.</p> <p>21 Q. How often do you get that?</p> <p>22 A. A couple times a month, approximately.</p> <p>23 Q. And what? Is it fingers and thumbs? Is it</p> <p>24 both hands? Describe where it is.</p> <p>25 A. It's my thumb and these two fingers</p> | <p style="text-align: right;">Page 25</p> <p>1 numbness that you're feeling in your fingers and your</p> <p>2 thumbs was caused by the accident?</p> <p>3 A. Yes.</p> <p>4 Q. And what doctor was that?</p> <p>5 A. Dr. Roccisano.</p> <p>6 Q. And when was the last time he said that --</p> <p>7 A. When I saw him right after the accident. I</p> <p>8 couldn't tell you exactly when it was.</p> <p>9 Q. And has he said that recently?</p> <p>10 A. I have not seen him recently.</p> <p>11 Q. How many times did you see Dr. Roccisano?</p> <p>12 A. Once.</p> <p>13 Q. The low back pain, do you still have -- do</p> <p>14 you have that currently?</p> <p>15 A. Not at this moment.</p> <p>16 Q. How often do you have low back pain?</p> <p>17 A. A couple, three, four, five times a week.</p> <p>18 Q. Do you take any medication for that?</p> <p>19 A. Ibuprofen.</p> <p>20 Q. Has any doctor in the last year and a half</p> <p>21 told you that your low back pain was caused by the</p> <p>22 accident?</p> <p>23 A. No.</p> <p>24 Q. Has any doctor ever told you that your low</p> <p>25 back pain was caused by the accident?</p> |

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| <p style="text-align: right;">Page 26</p> <p>1 A. Not specifically.</p> <p>2 I mean, when I saw Dr. Roccisano, it was</p> <p>3 for my neck and my spine and my back.</p> <p>4 Q. And what do you recall him saying?</p> <p>5 A. He -- about what?</p> <p>6 Q. About your neck, your back and your spine?</p> <p>7 A. He suggested that I get an MRI.</p> <p>8 Q. Did you have the MRI?</p> <p>9 A. No.</p> <p>10 Q. And why not?</p> <p>11 A. Because I had shoulder surgery shortly</p> <p>12 after.</p> <p>13 And after I had right shoulder surgery, I</p> <p>14 developed deep vein thrombosis in my left arm, and I</p> <p>15 couldn't do that.</p> <p>16 I couldn't have an MRI while I was on blood</p> <p>17 thinners, and I was on those for six months.</p> <p>18 Q. Did you have an MRI once you were done with</p> <p>19 the blood thinners?</p> <p>20 A. No.</p> <p>21 Q. And why not?</p> <p>22 A. Didn't have health insurance.</p> <p>23 Q. You've had health insurance in the last</p> <p>24 year and a half. Have you had that MRI that</p> <p>25 Dr. Roccisano recommended?</p> | <p style="text-align: right;">Page 28</p> <p>1 Q. Meaning once a month, or --</p> <p>2 A. Sometime once a month. Sometimes twice a</p> <p>3 week.</p> <p>4 Q. And have you seen any sort of medical</p> <p>5 provider for treatment for that?</p> <p>6 A. No.</p> <p>7 Q. And what are the nightmares?</p> <p>8 A. That I'm being impaled by a tree?</p> <p>9 Q. Anything else, or is it just that one</p> <p>10 nightmare over and over?</p> <p>11 A. Same nightmare over and over.</p> <p>12 Q. Have you discussed those nightmares with</p> <p>13 any doctor?</p> <p>14 A. No.</p> <p>15 Q. Are you -- are you seeing a mental health</p> <p>16 physician?</p> <p>17 A. No.</p> <p>18 Q. How about anxiety? Tell me what --</p> <p>19 describe the anxiety that you are claiming in this</p> <p>20 lawsuit.</p> <p>21 A. It's the fear that there's times that I</p> <p>22 will go to work, and I won't go home to my kids.</p> <p>23 Q. And how often do you feel that anxiety?</p> <p>24 A. Every time I get on a train.</p> <p>25 Q. When did this anxiety start?</p> |
| <p style="text-align: right;">Page 27</p> <p>1 A. No.</p> <p>2 Q. Why not?</p> <p>3 A. The same reasons that I stated earlier.</p> <p>4 Q. And so going back to what, if anything, did</p> <p>5 Dr. Roccisano say about what was causing your low</p> <p>6 back pain? Even though I know you didn't do the MRI,</p> <p>7 but what, if anything, did he say about what he</p> <p>8 thought might have been causing it, if anything?</p> <p>9 A. He didn't say. He just suggested that I</p> <p>10 get an MRI.</p> <p>11 Q. So, fair to say that Dr. Roccisano did not</p> <p>12 say it was caused by the accident?</p> <p>13 A. (No response.)</p> <p>14 Q. Let me rephrase the question.</p> <p>15 Is it fair to say that no doctor has said</p> <p>16 that your low back pain was caused by the accident?</p> <p>17 A. Yes.</p> <p>18 Q. Okay.</p> <p>19 So the nightmares, was this -- when did the</p> <p>20 nightmares start?</p> <p>21 A. Within days after the collision.</p> <p>22 Q. And you still have them?</p> <p>23 A. From time to time.</p> <p>24 Q. How often?</p> <p>25 A. Monthly.</p> | <p style="text-align: right;">Page 29</p> <p>1 A. Right after I went back to work in 2019.</p> <p>2 Q. And are you seeing any sort of mental</p> <p>3 health provider for the anxiety?</p> <p>4 A. I'm not seeing a mental health provider.</p> <p>5 Q. Has any doctor told you that the anxiety</p> <p>6 was caused by the accident?</p> <p>7 A. No.</p> <p>8 Q. Have you ever had anxiety prior to the</p> <p>9 accident?</p> <p>10 A. Yes.</p> <p>11 Q. How often?</p> <p>12 A. A couple times.</p> <p>13 Q. Anxiety about what? What was it related</p> <p>14 to?</p> <p>15 A. I don't know.</p> <p>16 Q. What sort of situations would create --</p> <p>17 would cause the anxiety for you? Make you be</p> <p>18 anxious, I guess?</p> <p>19 A. It wasn't a specific situation.</p> <p>20 Q. Okay.</p> <p>21 So, give me an example of some of the</p> <p>22 anxiety that you had prior to the accident?</p> <p>23 A. Mm, just nervousness for no apparent</p> <p>24 reason.</p> <p>25 Q. Okay.</p> |

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| <p style="text-align: right;">Page 174</p> <p>1 accumulate vacation days that you could use in 2018?</p> <p>2 A. Yes.</p> <p>3 Q. So in 2019, did you also not accumulate --</p> <p>4 not have vacation days because you were not working</p> <p>5 because of the termination?</p> <p>6 A. Yes.</p> <p>7 MR. NICASTRO: All right.</p> <p>8 Nothing further.</p> <p>9 MR. WOLFF: She will waive.</p> <p>10 MR. HAGEMAN: All right.</p> <p>11 We're off the record at 2:00 p.m., and this</p> <p>12 concludes today's testimony given by Deidre Agan.</p> <p>13 The number of total Media Units was 4 and will be</p> <p>14 retained by Veritext.</p> <p>15 (Whereupon, signature waived.)</p> <p>16 (Whereupon, the deposition was concluded at</p> <p>17 2:00 p.m.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | |
| <p style="text-align: right;">Page 175</p> <p>1 CERTIFICATE</p> <p>2</p> <p>3 STATE OF MONTANA)</p> <p>4) ss.</p> <p>5 County of Yellowstone.)</p> <p>6 I, Frances L. Mock, a free-lance shorthand</p> <p>7 reporter, a Notary Public in and for the State of</p> <p>8 Montana, do hereby certify that previous to the</p> <p>9 commencement of the examination of the said DEIDRE</p> <p>10 AGAN, a witness called for examination by the</p> <p>11 defendant in the said suit in the said U.S. District</p> <p>12 Court, District of Montana, Billings Division, being</p> <p>13 Civil Action No. 1:19-cv-000830-SPW-TJC, she was duly</p> <p>14 sworn by me to testify the truth in relation to the</p> <p>15 matters in controversy now pending and undetermined</p> <p>16 between the said parties so far as she should be</p> <p>17 interrogated concerning the same;</p> <p>18 That this deposition was taken in shorthand</p> <p>19 by me at 2722 Third Avenue North, Suite 400,</p> <p>20 Billings, Montana, on the 27th day of May, 2020,</p> <p>21 commencing at 9:03 a.m., and was reduced to</p> <p>22 typewritten form by me;</p> <p>23 That the foregoing is a true transcript of</p> <p>24 the questions asked, the testimony given and the</p> <p>25 proceedings had;</p> <p>That I am neither attorney nor counsel, nor</p> <p>in any way connected with any attorney or counsel for</p> <p>any of the parties to said action or otherwise</p> <p>interested in its event.</p> <p>IN WITNESS I have hereunto set my hand and</p> <p>affixed my notarial seal this 7th day of June, 2020.</p> <p>My commission expires December 19, 2023.</p> <p style="text-align: center;"><%6686,Signature%></p> | |

CERTIFICATE

STATE OF MONTANA)
) ss.
County of Yellowstone.)

I, Frances L. Mock, a free-lance shorthand reporter, a Notary Public in and for the State of Montana, do hereby certify that previous to the commencement of the examination of the said **DEIDRE AGAN**, a witness called for examination by the defendant in the said suit in the said U.S. District Court, District of Montana, Billings Division, being Civil Action No. 1:19-cv-000830-SPW-TJC, she was duly sworn by me to testify the truth in relation to the matters in controversy now pending and undetermined between the said parties so far as she should be interrogated concerning the same;

That this deposition was taken in shorthand by me at 2722 Third Avenue North, Suite 400, Billings, Montana, on the 27th day of May, 2020, commencing at 9:03 a.m., and was reduced to typewritten form by me;

That the foregoing is a true transcript of the questions asked, the testimony given and the proceedings had;

That I am neither attorney nor counsel, nor in any way connected with any attorney or counsel for any of the parties to said action or otherwise interested in its event.

IN WITNESS I have hereunto set my hand and affixed my notarial seal this 7th day of June, 2020.

My commission expires December 19, 2023.

Frances L. Mock

